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(b) The higher of audited patient days or 90% of bed capacity regulation applies to both rural and urban facilities.

(c) Changes in licensed bed capacity, which in turn effects the 90% licensed bed capacity standard specified above will be recognized by the Department as follows:

(1) Reductions or increases in license bed capacity of a facility shall be recognized due to either physical (structural) and or use modification of the facility. An example of a change in use is when a portion of the nursing home is converted to an alternative care facility.

(2) Reductions in licensed bed capacity including physical modifications undertaken solely to avoid the financial impact of the 90% licensed bed capacity shall not be recognized.

(3) Recognized changes in licensed bed capacity (and its impact on the 90% licensed bed capacity standard) shall go into effect with rates driven by the cost report covering the period of the change in licensed bed day capacity.

B. In cases where the nursing home's per diem rate on or after July 1, 1986 is lower than the per diem rate in effect on June 30, 1985 solely as a result of adjustment to property cost to implement the fair rental allowance method of reimbursement, the following shall occur:

1. The contract auditor shall determine the difference between the July 1, 1986 property reimbursement and the June 30, 1985 property reimbursement.

2. In cases where the June 30, 1985 property reimbursement is higher than the July 1, 1986 property reimbursement, the providers fair rental allowance shall be increased by fifty percent (50%) of the difference identified by the contract auditor.

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C. The fair rental allowance as established by these regulations shall only be adjusted due to the following:

   1. The base value of a facility can be increased in subsequent cost reports due to improvements as specified in the definitions section of this regulation.

   2. Changes in MED-13 patient days when calculating the fair rental allowance per diem.

   3. At the start of a new State Fiscal Year (July 1) by a new rental rate amount or additional Dodge Construction Indexes.

D. The fair rental allowances as established by these regulations shall not be changed during State Fiscal Year 1986-87 by the following:

   1. A fluctuating cost allowance.

   2. By changes in ownership in cost reporting periods with rate effective dates on or after July 1, 1985.

   3. Changes in the maximum reasonable cost ceilings for administrative, room and board and property and related incentive allowance payment.

E. All facilities except the home and community based/developmentally disabled facilities are covered by the fair rental allowance reimbursement methodology. Lease facilities shall no longer be reimbursed under the lease information regulation found at 8.446 of the Colorado Department of Social Services manual.

F. The fair rental allowance shall become the third component of the rate. The other two components of the rate shall be:

   1. Administrative, room and board and property (with the relevant amount of incentive allowance and fluctuating cost allowance); and

   2. Health and raw food costs (with the relevant amount of fluctuating cost allowance).

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Therefore, each nursing home is given three rates. The rate for administration, property and room and board is the sum of the audited allowable costs (of the maximum reasonable cost, whichever is lower), the fluctuating cost factor, and the incentive allowance, if any. The rate for health care services and raw food is the sum of the audited allowable costs (or the maximum reasonable cost, whichever is lower) and the fluctuating cost factor. The rate for land, buildings and fixed equipment is established by the fair rental allowance formula. This is illustrated below:

Audited allowable administrative, room and board and property cost per patient day up to the maximum reasonable cost:

\+ Fluctuating cost factor (excluding interest)
\+ Incentive allowance (if applicable)
= Rate for administration, room and board and property

PLUS

Audited allowable health care and raw food cost per patient day up to the maximum reasonable cost:

\+ Fluctuating cost factor
= Rate for health and raw food

PLUS

Fair rental allowance for land, buildings and fixed equipment.

5. Implementation of the Fair Rental Allowance for Capital Related Assets beginning State Fiscal Year 1987-1988 and thereafter.

   A. The fair rental allowance payments shall be calculated as follows for the month of July 1, 1987:

      All the provisions of the above section for fiscal year 1988 shall be applied to the payments for July 1987 except for the following:

      1. The rental rate shall equal 10.81%;

      2. The Dodge Construction index shall be applied at 100% of the change;

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3. The hold harmless calculation shall be applied at 100% of the difference between the June 30, 1985 and the July 1, 1987 payments;

4. The fair rental allowance payments shall not be reduced by 50% of the difference when the June 30, 1985 payments are higher than the July 1, 1987 payments.

B. The following definitions shall serve as the basis by which the fair rental allowance payments are calculated and paid to facilities beginning August 1, 1987 and thereafter.

1. Base value: Value of the capital related assets of a nursing home is determined by the appraisal report completed by the Department's appraiser pursuant to RFP-GB-347 (October 21, 1985) and any additional information used by the Department to establish the appraised value. This appraised value shall be increased or decreased by fifty percent (50%) of the change in the Dodge Construction Index. Under no circumstances will the base value be greater than $25,000 per bed plus two year's percentage rate of change in the Dodge Construction Index dollar cost per square foot for the average nursing home building type.

2. Rental Rate: Means the average annualized rate for twenty year treasury bonds issued by the United States for the preceding year. The twenty year treasury bond rate shall be bsed on the higher of the issue rate or the yield rate of the twenty year treasury bond. For State Fiscal Year 1988 the Department has determined the issue rate to be higher than the yield rate and the rental rate shall be 9.375%.

3. Fair Rental Allowance Amount: The base value times the rental rate. This sum shall then be adjusted to reflect the period of days covered by the cost report (MED-13) used to calculate the fair rental allowance per diem rate as described below.

   Specifically, this figure is divided by number of days in the year and then multiplied by the number of days in the period covered by the cost report (MED-13).

4. Fair Rental Allowance Per Diem Rate: The fair rental allowance amount divided by the higher of audited patient days on the MED-13 or ninety percent (90%) of bed capacity on file with the Colorado Department of Health when the onsite portion of the appraisal was completed, except as otherwise provided in sub-paragraph 3 below:

   (a) The patient days used in this calculation are from the MED-13 report which established the Medicaid rate for the other cost centers. As the rates change due to new MED-13 cost reports, so shall the fair rental allowance calculation due to the change in patient days.

   (b) The higher of audited patient days or 90% of bed capacity regulation applies to both rural and urban facilities.

   (c) Changes in licensed bed capacity, which in turn affects the 90% licensed bed capacity standard specified above will be recognized by the Department as follows:

      (1) Reductions or increases in licensed bed capacity of a facility shall be recognized due to either physical (structural) and or use modification of the facility. (An example of a change in use is when a portion of the nursing home is converted to an alternative care facility.

      (2) Reductions in licensed bed capacity including physical modifications undertaken solely to avoid the financial impact of the 90% licensed bed capacity shall not be recognized.

      (3) Recognized changes in licensed bed capacity (and its impact on the 90% licensed bed capacity standard) shall go into effect with rates driven by the cost report covering the period of the change in licensed bed day capacity.

C. In cases where the nursing home's per diem rate on or after August 1, 1987 is lower than the per diem rate in effect on June 30, 1985 solely as a result of adjustment to property costs to implement the fair rental allowance method of reimbursement, the following shall occur:

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1. The contract auditor shall determine the difference between the July 1, 1986 property reimbursement and the June 30, 1985 property reimbursement. Included in the calculation of this difference shall be rates which were lowered due to adverse changes in the incentive allowance of fluctuating costs allowance payments due solely to the fair rental allowance system of reimbursement.

2. In cases where the June 30, 1985 property reimbursement is higher than the August 1, 1987 property reimbursement, the providers fair rental allowance shall be increased by fifty percent (50%) of the difference identified by the contract auditor.

D. On and after August 1, 1987, if a vendor payment under the fair rental allowance system is greater than the vendor payment in effect on June 30, 1985, and such increase is wholly or partly the result of the payment of a fair rental allowance for capital-related assets, then that portion of the increase in the vendor payment attributable to the payment of a fair rental allowance for captial- related assets shall be reduced by fifty percent (50%). This fifty percent (50%) reduction shall not be applied to vendors who's current acquisition costs for the capital related assets of the facility are different (due to the sale of the facility) than the acquisition (historical) costs which determined the rate of reimbursement on June 30, 1985.

E. The fair rental allowance as established by these regulations shall only be adjusted due to the following:

1. The base value of a facility can be increased in subsequent cost reports due to improvements as specified in the definitions section of this regulation.

2. Changes in MED-13 patient days when calculating the fair rental allowance per diem.

3. At the start of a new State Fiscal Year (July 1) by a new rental rate amount or additional Dodge Construction Indexes.

F. The fair rental allowance as established by these regulations shall not be changed during State Fiscal Year 1987-1988 by the following:

1. A fluctuating cost allowance.

2. By changes in ownership in cost reporting periods with rate effective dates on or after July 1, 1985.

3. Changes in the maximum reasonable cost ceilings for administrative, room and board and property and related incentive allowance payment.

G. All facilities except the home and community based/developmentally disabled facilities are covered by the fair rental allowance reimbursement methodology. Lease facilities shall no longer be reimbursed under the lease information regulation found at 8.446 of the Colorado Department of Social Services manual.

H. The fair rental allowance shall become the third component of the rate. The other components of the rate shall be:

1. Administrative, room and board and property (with the relevant amount of incentive allowance and fluctuating cost allowance); and

2. Health and raw food costs (with the relevant amount of fluctuating cost allowance).

Therefore, each nursing home is given three rates. The rate for administration, property and room and board is the sum of the audited allowable costs (or the maximum reasonable cost, whichever is lower), the fluctuating costs factor, and the incentive allowance, if any. The rate for health care services and raw food is the sum of the audited allowable costs (or the maximum reasonable cost, whichever is lower) and the fluctuating cost factor. The rate for land, buildings and fixed equipment is established by the fair rental allowance formula. This is illustrated below:

Audited allowable administrative, room and board and property cost per patient day up to the maximum reasonable cost:

+ Fluctuating cost factor(excluding interest)
+ Incentive allowance (if applicable)
= Rate for administration, room and board and property

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Audited allowable health care and raw food cost per patient day up to the maximum reasonable cost:

+ Fluctuating cost factor
= Rate for health and raw food

III. State-owned and Administered ICF/MR's - On and after July 1, 1988 State-owned and administered ICF/MR's as stated in the beginning of Section II above, are not reimbursed in accordance with the methods and standards described in Section II. The State-owned and administered ICF/MR's are reimbursed in accordance with the following methods and standards:

A. Cost Reports: The State-owned and administered ICF/MR's continue to submit their cost reports on a 12 month basis based on their fiscal year end. These costs reports are subject to yearly audit in accordance with the Standards section of this manual.

B. Rate Effective Date: The rate effective date for these facilities shall be the first day of the period covered by the cost report. The rate on July 1, 1988 through June 30, 1989 (and every July 1 through June 30) shall be based on the actual audited cost of the various facilities for the cost reporting period of the same time (July 1 through June 30). In other words, the rate for July 1, 1988 and thereafter is a retrospectively established rate which covers the actual audited costs of these facilities. Under no circumstances are these facilities to receive rates of payment higher than their actual audited costs.

C. Interim Rates: These facilities are to receive an interim rate until the cost report for the effective period is received and finally audited by the State Department of Social Services. This interim rate is to be based on estimated costs to be incurred in the following cost reporting period. This information is supplied to the Department of Social Services by each State-administered ICF/MR. The Department of Social Services shall review this information and determine it is a reasonable estimate of actual costs to be incurred the following fiscal year of the facilities. This interim rate shall remain in effect from July 1 through June 30.

On the basis of the audited cost report which is to be filed 90 days after the fiscal year period ends, the interim rate is retroactively adjusted to reflect the actual audited costs of the facility. All interim rates issued pursuant to these provisions shall be adjusted and recovery of any overpayment (due to the estimated interim rate being higher than the actual audited rate) occurring once the cost report is finally audited by the State or its contract auditor. And underpayment (due to the estimated interim rate being higher than the actual audited rate) shall be paid to the provider once the cost report is finally audited by the State Department or its contact auditor.

These State-Administered ICF/Mrs are not to receive a fair rental allowance payment, an incentive allowance or fluctuation cost allowance. Property costs will be reimbursed in accordance with the Medicare principals of reimbursement including straight line depreciation for all capitalized assets. The imputed occupancy provisions are also not applied to these facilities.

D. Under no circumstances is the Medicaid audited rate for these facilities to exceed the rate charged to the private pay residents or residents with other sources of payments (besides Medicaid). The weighted average private pay rate shall be determined by the actual rate, including discounts, charged to private pay residents or private insurance payers for nursing facility services, including ancillaries covered by the Medicaid rate. The weighted average private pay rate determination shall consider the following guidelines:

1. In cases where part of the providers private pay rates include rates from private insurance payers or Medicare, these rates when included in the weighted average private pay rate calculation shall not exceed one hundred twenty-five percent (125%) of the providers Medicaid per diem rate.

2. Providers who offer discounts for early payment by residents or for any other reasons, may have their private pay rate charged to those residents reduced by the amount of the discount; however, under no circumstances shall the discount be greater than five percent (5%).

3. Facilities with less than ten percent (10%) private pay residents of the total facility population will not be held to the private pay rate to assure adequate reimbursement for these residents.

If a provider receives formal notice of a Medicaid rate increase later than the effective date of the increase, the reduction of the Medicaid rate to the private pay rate shall not occur until sixty (60) days from the date the notice was sent to the provider. Should the provider increase their private pay rate during the sixty (60) day period, the new private pay rate shall be used for purposes of rate comparison.

IV. Out-of-state Nursing Homes - payment shall be 100% of audited Medicaid costs as determined by the Department and/or its agent. These audited costs will be based on Medicaid costs in the State where the facility is located. If the facility is not a Medicaid participant, it shall submit to the Department prior to payment, an audited Medicare cost report. The payment shall be 100% of audited Medicare costs.

V. Rate Reduction - when nursing homes fail to submit their MED-13 within the required time, the Department shall withhold all warrants not yet released to the provider for a 90-day period or until an acceptable MED-13 has been submitted. (If there are properly documented reasons for failure to comply, providers may receive an extension of the original filing period by submitting written requests at least ten days prior to the deadline.) If no acceptable cost report has been submitted by the end of the 90-day withholding period, the provider's participation in the Medicaid program will be terminated. Interest paid by the provider on loans for working capital during this 90-day period are not allowable costs and overpayments made by the Department as a result of the delayed submission of the MED-13 shall be recovered by the Department. A similar procedure is followed when the submitted MED-13 is incomplete or inauditable, but providers are given an automatic 30-day extension to correct their reports if the deadline for submission has already passed.

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VI. Effective Date - Rates developed from six-month cost reports become effective for the entire month in which the 60th day after submission of the MED-13 falls. Rates developed from 12-month cost reports become effective on the first of the month of the third calendar month following the last month of period covered by the 12-month cost report.

VII. Rates for New Nursing Home Providers - Until the new facility submits its first cost report under its new designation, it is reimbursed under a flat per diem rate. These rates apply to all nursing home providers who have not participated in the Medicaid program for over 30 days prior to the effective date of their current participation, and nursing homes which have changed their classification status.

VIII. Rates for facilities in Receivership:

When a receiver has been appointed by the Court (pursuant to Section 25-3-108 C.R.S.) at the request of the Colorado Department of Health, the following special rate setting provisions apply. These special provisions do not apply when the receiver is appointed at the request of any other party such as the previous operator, landlord or other interested party.

A. <u>During the Receivership</u>

1. During the term of the receivership, the receiver is to receive the rate payable to the previous operator. The Department may increase the amount of this rate should it find the patient related, necessary and reasonable costs of the facility operation are not covered by the rate payable to the previous operator.

2. The receiver is to submit a cost report for the time the receiver is appointed until the time the receiver is no longer operationally in control of the nursing facility operation.

3. This cost report shall set a rate payable to the receiver for the date the receiver took operational control of the facility. This retrospective rate may set a rate higher or lower than the initial rate established and paid to the receiver in which case the under or over payment shall be either paid to or collected from the receiver. The retrospectively set rate may not exceed the maximum allowable rates as established pursuant to the method Section II A of the State Plan entitled <u>Maximum Reasonable Allowable Cost</u>.